IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

-

WRIT PETITION NO : 22771 of 2004

Between:

Pasumarthi Veerabhadrarao, S/o. Suryanarayana,
R/o. K. Pentapadu, Tadepalligudem, West Godavari District.

..... PETITIONER

AND

1 The Divisional Engineer,(Assessments), Eastern Power Distribution Company of A.P. Ltd., Rajahmundry, E.G.District.
2 The Asst. Divisional Engineer, Eastern Power Distribution company of A.P., Ltd., Operation, Town, Tadepalligudem, W.G.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue an appropriate writ, order or direction more particularly in the nature of writ of mandamus declaring the action of the 2nd respondent in issuing the impugned Lr.No. ADE/OSD/T/TPG/S.Er./F. Pil/D.No.1476/04 dt. 16.10.2004 as illegal, arbitrary and unconstitutional and consequently direct the respondents to reconnect the service connection bearing S.C.Nos. 62 under category No.II and 193 under category No.I at K. Pentapadu Tadepalligudem, W.G.District.

Counsel for the Petitioner : MR.C.B.RAM MOHAN REDDY

Counsel for the Respondents: MR.KANAKAMEDALA RAVINDRA KUMAR

The Court, at the stage of admission, made the following :

ORDER:

Petitioner is provided with two services of electricity, one for commercial purpose and the other for domestic. He states that he is running a flour mill by using the electricity supplied through commercial service. The premises are said to have been inspected on 16.10.2004. On the ground that the petitioner had resorted to certain acts of pilferage, the respondents issued an order of provisional assessment, dated 16.10.2004, assessing the value of the pilfered energy to be at Rs.1,02,830/-. Petitioner was required to pay half of that amount, if he wants the continuance of supply. It is stated that the power supply was disconnected on the ground that the amount was not paid.

Learned counsel for the petitioner submits that the petitioner could not be assessed to such a huge amount and in fact, he has not resorted to any act of pilferage. He further submits that the order of provisional assessment is almost in the form of a show cause notice, and no liability, as such, can be fastened on a consumer, until an order of final assessment is passed. He places reliance upon a Judgment rendered by a Division Bench of this Court in W.A.Nos.452 and 477 of 2004, dated 11.03.2004.

Learned Standing Counsel for the respondents, on the other hand, submits that the facts of the case clearly disclose that the petitioner had resorted to acts of pilferage, and pending verification of the allegations, he can certainly be required to pay at least half of it. He relies upon the relevant terms and conditions of supply.

It is not in dispute that the petitioner was issued only an order of provisional assessment and is required to pay a sum of Rs.51,000/- to ensure continuance of

supply. By its very nomenclature, the order is provisional in nature and no liability, as such, can be discern from it. It is only when the explanation offered by the petitioner, in response to the order of provisional assessment, is not accepted, and the order of final assessment is passed, that the actual liability of the petitioner is said to have arisen. A Division Bench of this Court in the Judgment, referred to above, held that no consumer can be fastened with liability except through an order of final assessment.

Following the same, the writ petition is allowed directing that the respondents shall restore and continue the supply to the petitioner forthwith, without insisting on any payment of the amount indicated in the order of provisional assessment. Petitioner, however, shall be liable to pay the regular consumption charges and his liability for the alleged acts of pilferage shall be fastened only through an order of final assessment. There shall be no order as to costs.

_____

L.NARASIMHA REDDY, J

Dated :09th December, 2004

Ts

-

To

1 The Divisional Engineer,(Assessments), Eastern Power Distribution Company of A.P. Ltd., Rajahmundry, East Godavari District.
2 The Assistant Divisional Engineer, Eastern Power Distribution Company of A.P., Ltd., Operation, Town, Tadepalligudem, West Godavari District.

3 Two C.D. copies.